

JOHN C. McFERRAN.

[To accompany Bill H. R. No. 372.]

MARCH 19, 1860.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the petition of Lieutenant John C. McFerran, praying to be credited on the books of the Treasury Department with the sum of \$1,265 for which, as assistant commissary of the United States army, he erroneously receipted to Lieutenant Francis J. Thomas, also an assistant commissary in said army, makes the following report:*

The testimony presented to the committee fully establishes the following state of facts:

That the petitioner, being an assistant commissary in the United States army, stationed at Santa Fé, in New Mexico, was on or about the 1st day of November, 1850, required to receive of Lieutenant Francis J. Thomas, also an assistant commissary in said army, a large amount of money belonging to the United States, and to pass to said Thomas his official receipts for the same. That before the counting of said money was completed, there being several sealed boxes of specie with the amounts purporting to be contained in each marked thereon, the said Thomas, by representing that it was necessary for him to return without delay to the Atlantic States; that if compelled to remain until the whole counting was completed he should be subjected to great delay and inconvenience; and that the contents of said remaining boxes had been counted by himself or under his immediate supervision and the boxes correctly marked, induced the said petitioner to take the said boxes by the marks thereon, and to receipt to the said Thomas for the entire amount thus indicated.

That said boxes of specie were placed in a government vault at Santa Fé, and were taken out and the contents counted, from time to time, as the funds were required for the use of the army. Save one box, which contained an excess of two dollars over the amount marked thereon, all the boxes were found to be correctly marked, except a box numbered 21, which was the last one opened, and the contents of which were found to fall short of the amount marked thereon by the sum of \$1,267. This box was opened and its contents counted by the pe-

tioner in the presence and with the assistance of Wm. J. Gourlay, chief clerk of the subsistence department in Santa Fé, in June, 1851, some seven months after it had been received from Lieutenant Thomas. The committee has no doubt, however, from the evidence, that it had in the meantime remained unopened and its contents undisturbed.

That immediately after the discovery of said deficiency, the petitioner transmitted to the chief of the bureau at Washington having charge and control of the subsistence department of the army notice of the said deficiency, with all the attending circumstances, with a request that no settlement should be concluded between the accounting officers of the government and the said Thomas until the matter should be fully investigated by the proper authorities. Yet the said Thomas was permitted to settle his accounts and to resign without any such investigation being had, and received credit for the whole amount for which the petitioner had receipted as aforesaid, and which entire amount was charged to the petitioner on the books of the treasury.

That the said Thomas being the owner of valuable property in the Territory of New Mexico, the petitioner commenced a suit against him in the United States district court of said Territory for the recovery of the amount of said deficiency, and sued out a writ of attachment which was levied on the lands and tenements of the said Thomas within the jurisdiction of said court; but, on the hearing of said cause, the court dismissed the attachment on the ground that the money which the plaintiff was seeking to recover was the property of the United States, and not the property of the said petitioner, and that said Thomas was bound to account to the United States for the same, and not to the petitioner.

It is shown by a certificate of the Third Auditor of the Treasury that at the time of the resignation of Lieutenant Thomas he was in default to the United States in the sum of \$9,161 48, in addition to the amount for which he improperly got credit as aforesaid.

The committee is entirely satisfied of the integrity and good faith of the petitioner in the premises, and entertains no doubt that there was in fact the deficiency which he alleges in the contents of said boxes at the time he received them from the said Thomas.

From the above statement of facts it will be seen that Thomas stands credited on the books of the Treasury Department with the sum of \$1,265, as having been paid over to McFerran, which he never did in fact pay over to him, and that McFerran stands debited with the same amount, which he never in fact received.

Admitting that Mr. McFerran was guilty of some degree of negligence in not counting all the money for which he receipted to Thomas, that fact alone is not sufficient to charge him with the amount of said deficit. From the mere facts that an agent has been negligent, and his principal has suffered loss, it does not necessarily follow that the agent is bound to make the loss good. The further fact should be shown, that the loss was a *consequence* of the negligence.

The mere fact that McFerran erroneously gave a receipt to Thomas for money of the United States which he never received of him, changed none of the rights or remedies of the government as against Thomas. The error in the receipt was explainable by parol testimony in an

action at law, and when explained the receipt could not operate as any bar to a suit by the United States against Thomas for the recovery of said money.

If the United States lost any of its remedies against Thomas, it was not because McFerran gave the erroneous receipt, but because the error was not discovered for several months after the receipt was given. If Thomas was solvent at the time the receipt was given, and became insolvent before the error was detected, it may be that the United States lost the money in consequence of the failure of McFerran to count the funds for which he receipted to Thomas. But there is no evidence before the committee to show that the United States could have enforced the payment of said deficit from Thomas, at any time between the giving of the receipt and the discovery of the error, by any means that were not equally available after the error was detected.

It appears from evidence before the committee that it has been the practice of many collecting and disbursing officers, in both the civil and military departments of the government, to receive from other public officers large amounts of specie in bags and boxes, and receipt for the same according to the labels thereon, without actually counting the contents, in cases of emergency, under circumstances similar to those which influenced the conduct of the petitioner in this case. Bankers and other business men, reputed to be prudent, often receive and account for large sums of money in like manner, without actually counting the same, where they have reason to repose confidence in the person from whom the same is received.

There is nothing in the evidence before the committee to show that McFerran had any reason to suspect the integrity of Thomas at the time he received said boxes of specie from him. If he exercised the same degree of care and diligence that public officers, reputed to be prudent and faithful, are accustomed to exercise under similar circumstances in respect to the public funds passing through their hands, and that bankers and business men are accustomed to exercise in the conduct of their own private affairs, it may be questioned whether he should be required to make good a loss incurred by the government *in consequence* of his omission to count the money. But admitting that McFerran was guilty of *laches* that would justly render him responsible to the government for any losses clearly resulting therefrom, the committee are of opinion that there is not sufficient evidence that the government in fact lost anything in consequence of his failure to count said money to justify the government in requiring him to pay into the treasury said sum of \$1,265 which he never received.

Entertaining this view of the case, the committee are of opinion that said petitioner is entitled to be credited on the books of the Treasury Department with said sum of \$1,265, and therefore report the accompanying bill for his relief.

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